



**MINUTES
SCOTTSDALE PLANNING COMMISSION
KIVA – CITY HALL
3939 N. DRINKWATER BOULEVARD
FEBRUARY 11, 2003**

PRESENT: David Gulino, Chairman
Charles Lotzar, Vice Chairman
James Heitel, Commissioner
Kay Henry, Commissioner
Tony Nelssen, Commissioner
Kevin Osterman, Commissioner
Steve Steinberg, Commissioner

STAFF: Pat Boomsma
Tim Curtis
Teresa Huish
Jerry Stabley
Bill Verschuren
Kira Wauwie
Randy Grant

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Gulino at 5:05 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

CHAIRMAN GULINO stated they would be changing the agenda order. He further stated he is declaring a conflict on cases 16-UP-1997#2, 17-UP-1997#2 and 25-ZN-2002. He reported first the Commission would approve the continuances, then they would hear case 25-ZN-2002, and they go back to the agenda as posted.

MINUTES APPROVAL

1. December 11, 2002
2. December 18, 2002
3. January 22, 2003

APPROVED

VICE CHAIRMAN LOTZAR MADE A MOTION TO APPROVE THE DECEMBER 11, 2002, DECEMBER 18, 2002 AND JANUARY 22, 2003 MINUTES AS PRESENTED. SECOND BY COMMISSIONER OSTERMAN.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

OPENING STATEMENT

COMMISSIONER OSTERMAN read the opening statement which describes the role of the Planning Commission and the procedures used in conducting this meeting.

CONTINUANCES

16-UP-1997#2 (Danny's Car Wash - Shea) request by Deutsch Associates, applicant, Pinnacle & Pima LLC, owner, to amend an existing use permit for an automated carwash on a 2.5+/- acre parcel located at 7373 E Shea Boulevard with Central Business District (C-2) zoning. **Continued to March 25, 2003.**

(CHAIRMAN GULINO DECLARED A CONFLICT AND DID NOT PARTICIPATE IN THE VOTE.)

17-UP-1997#2 (Danny's Car Wash - Shea) request by Deutsch Associates, applicant, Pinnacle & Pima LLC, owner, to amend an existing use permit for a service station on a 2.5+/- acre parcel located at 7373 E Shea Boulevard with Central Business District (C-2) zoning. **Continued to March 25, 2003.**

(CHAIRMAN GULINO DECLARED A CONFLICT AND DID NOT PARTICIPATE IN THE VOTE.)

11-AB-2002 (Pueblo PoQuito Abandonment) request by Earl Curley & Lagarde PC, applicant, Multiple owners, for an abandonment of a 10 feet wide public right-of-way located along the north side of Mountain View Road and a 18 feet wide General Land Office patent roadway located along the west side of 123rd Street. **Continued to February 26, 2003.**

VICE CHAIRMAN LOTZAR MOVED TO CONTINUE CASE 11-AB-2002 TO THE FEBRUARY 26, 2003 PLANNING COMMISSION MEETING. SECOND BY COMMISSIONER OSTERMAN.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

COMMISSIONER HEITEL MOVED TO CONTINUE CASES 16-UP-1997#2 AND 17-UP-1997#2 TO THE MARCH 25, 2003 PLANNING COMMISSION MEETING. SECOND BY COMMISSIONER STEINBERG.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0) WITH CHAIRMAN GULINO ABSTAINING.

REGULAR AGENDA

25-ZN-2002 (Foothills Overlay) request by City of Scottsdale, applicant, to apply Foothills Overlay (FO) zoning for 10+/- square miles known as the Desert Foothills area, generally located between 56th and 96th Streets, from Happy Valley to Ashler Hills Roads.

(CHAIRMAN GULINO DECLARED A CONFLICT AND DID NOT PARTICIPATE IN THE DISCUSSION OR THE VOTE.)

MS. HUI SH presented an overview of the Tonto Foothills Strategic Plan. She reviewed the programs included in the Strategic Plan.

MR. STABLEY presented this case as per the project coordination packet. Staff recommends approval of the request.

COMMISSIONER NELSEN requested clarification on perimeter wall. Mr. Stabley stated it does not apply to front yards it only applies to the rear and back. He further stated that needs to be clarified.

COMMISSIONER NELSEN stated he had a question regarding allowing corral fencing on the perimeter of your property and the impact it would have on the NAOS. The perception is that people would let their large animals loose and allow them to graze in the NAOS. He further stated the intent of the corral fencing is for the safety of the animals. He inquired if there was any provision in the ordinance to deal with this issue. Mr. Stabley stated he would have to look at the ordinance to see what there is to speak to that issue. Commissioner Nelsen stated a sentence could be included that corral fencing is for the safety of the animals and animals should not be kept in areas that are natural area open space.

COMMISSIONER OSTERMAN inquired if the current property owners will be grandfather under the overlay they built under and currently live under. Mr. Stabley replied the existing buildings and existing development would be grandfathered. If they currently have a building permit for something they would be allowed to use the building permit and build under the existing ordinance. Once the new ordinance takes place any additions would have to follow the new ordinance. Commissioner Osterman inquired if they have done a survey of the existing building permits and construction currently underway in that area. Mr. Stabley replied in the affirmative.

COMMISSIONER HENRY stated if a property owner has a piece of property and they have almost built it out and they want to add something, under the current ordinance they would have had room. The new ordinance goes into effect and they want to add a shed and now they can't. If they wanted to add it they would probably have to take buildings down to meet the requirements. Mr. Stabley replied that is true, but in most circumstances under the existing ordinance it would be a challenge to build out to the maximum that the ordinance would allow. He further stated he would suspect that a vast majority of the people never gets close to using the amount of land potential under the current ordinance.

Commissioner Henry stated for example, if the owners decided they wanted a different wall and they tore down the existing 12-foot perimeter wall under the new ordinance they would have to replace it with a shorter wall. Mr. Stabley replied in the affirmative. He noted the wall situation is not one they had thought of but the wall would have to comply with the standards of the new ordinance. Commissioner Nelssen inquired if there were any walls taller than 8 feet in this area. Mr. Stabley replied most are less than six feet.

COMMISSIONER NELSEN requested staff address the letter from Jackie Jones. He stated Ms. Jones is in opposition to this request. One of her concerns is that you can't build two-story buildings in this area. He inquired if there is any reason why you can't build a two-story building at 24 feet. Mr. Stabley replied the people staff have spoken to felt that 24 feet can work for a two-story building but won't give them as much flexibility if they had 26 to 30 feet. Commissioner Nelssen stated Ms. Jones also has concerns about the individuality of the neighborhood. He inquired if this overlay would adversely effect the individuality of the neighborhoods. Mr. Stabley replied this ordinance should not adversely impact the individuality of the neighborhood.

Commissioner Nelssen inquired if this ordinance would change the placement of accessory buildings in the front yard not to be confused with the required front yard setback. Mr. Stabley stated he would discuss that issue with legal counsel during public testimony and get back to them.

COMMISSIONER STEINBERG inquired if current applicants designed around the current ordinance would they be given enough time to get a permit based on the current application. Mr. Stabley replied there would be a 30-day lag time from when the plan was approved and when it would take effect.

(VICE CHAIRMAN LOTZAR OPENED PUBLIC TESTIMONY.)

JANE RAU, 8148 E. Cortland, spoke in favor of this request. She requested the Foothills Overlay be implemented because it is something she has been working on for 18 years. She reported there have been thousands of hours put into this overlay. She further reported the majority of the people in this area are in favor of this overlay and want it to move forward.

LYNNE LAGARDE, 3101 N. Central Suite 100, Phoenix, AZ, stated she represents several property owners in the area who are at various stages of construction. She further stated she thought that everyone would agree this is a worthwhile effort and it is time to implement the Foothills Overlay but there are some practical problems with the overlay. There is no grandfathering provision in the ordinance language. She requested that they immediately initiate a grandfathering provision. She noted there was a mailer that went out that stated it is important to note the overlay will not impact existing buildings and development. She further noted she has a client that is currently building under the existing rules in this area and he is planning an accessory building. The plans have been drawn under the existing ordinance and now he might not be able to pull the permit. She commented the issue of grandfathering is a serious problem and needs to be addressed before this overlay is adopted.

Ms. Legarde stated one of the biggest issues with this process is that the ordinance language was adopted and the overlay was not applied at the same time. There are a lot of people who do not know what the Foothills Overlay Ordinance says and it is being applied to their property. She requested they consider a grandfathering provision.

COMMISSIONER NELSEN inquired if Ms Legarde was at liberty to disclose who her client is. Ms. Legarde stated she would prefer not to because she has not checked with her client on disclosure. Commissioner Nelsen inquired if Ms. Legarde could say whether it was a relatively large piece of property. Ms. Legarde replied this is not the Constantine property if that is what you are thinking about.

WAYNE ANDERSON, 7670 E. Jomax Road, representing Redeemer Lutheran Church, stated they believe the Foothills Overlay is a good idea and overall is a benefit to the neighbors. He further stated they are concerned because they don't know what the grandfather clause is. He remarked they would urge the Commission to make sure that there is a clear grandfathering clause included in the ordinance.

ROSLYN ABRAMOWITZ, 21645 N. 53rd Drive, spoke in opposition to this request. She stated she owns a lot in a subdivision in this area and there are only three lots that are not developed. The development has been there for 30 years. She requested that the three lots be grandfathered in on the old ordinance so when these homes are built they would be like the other homes.

MR. GRANT stated for clarification properties that would be grandfathered in would enjoy the same property rights from existing development that is default in the zoning ordinance. If they wanted to change the grandfathering status to include any other type of provision that would relate to future development or development under construction or some time limitation on when development continue to occur under the old provision then they would make a change to the provision. The way it is going into affect is consistent wit the text Zoning ordinance.

COMMISSIONER STEINBERG stated they always have the option for a variance.

VICE CHAIRMAN LOTZAR stated what Ms. Abramowitz is saying is that she has an undeveloped piece of property in a subdivision. He further stated he does not want to mislead her given Mr. Grant's explanation because it would seem her fears on some level are justified in that her undeveloped parcel would be subject to this new ordinance. Mr. Grant stated in the situation where it has been subdivided there is the potential that there are amended development standards and those amended development standards would vest the right to develop within that subdivision. If it was a piece of property that was simply vacant and didn't have a building on it and didn't have amended development standards then it would be required to come under the new ordinance. Vice Chairman Lotzar stated you can't take any comfort with the grandfathering they would need to look at their underlying case to see if there are amended development standards that would trump the new ordinance.

JIM TOGERSON, representing Desert Foothills Lutheran Church, President Lutheran Foothills Church, stated they have 17 acres and Pastor Schmitt is here to express their concerns about the overlay.

MIKE SCHMITT, 29305 N. Scottsdale Road, reported in the future they hope to be able to build a school. The height restriction probably will be a problem for the gymnasium. He further reported with the restrictions they have concerns about their ability to grow and continue to help the community in this area.

Mr. Torgeson stated they are a non-profit organization that provides numerous services on a gratis basis. They also provide a lot of donations and services to people in less fortunate parts of the city. He further stated if they had to provide another 25-foot setback for every additional foot it would be very onerous.

(VICE CHAIRMAN LOTZAR CLOSED PUBLIC TESTIMONY.)

COMMISSIONER STEINBERG inquired where the height is measured from. Mr. Grant replied it is measured from natural grade.

COMMISSIONER HEITEL stated just to be clear this overlay is not breaking any new ground in regards to the comment made earlier with regards to the consistency with non-conforming uses. This is generally the standard procedure for dealing with a new ordinance and overlay. Mr. Grant stated this would be implemented with the same grandfathering provisions that other overlay ordinances have been enacted.

Commissioner Heitel stated typically most subdivisions have amended development standards in them that would usurp the overlay so they can rest assure those are being cared for in this process. Ms. Boomsma stated it depends on what the development standards are. It would depend whether a development agreement is applicable to the property. If there is a development agreement applicable to the property and it addresses the specific issue at hand then the other provision would be grandfathered in. In an absence of a specific provision then the new provisions would control.

Commissioner Heitel stated there appears to be the presumption that no relief is provided in this overlay and clearly there is a full page of relief under paragraph F for special exemptions that provide relief through the DR Board and the City Council. Mr. Grant reported there are provisions for the DR Board to be able to provide relief up to 25 feet of the standard and City Council over 25 feet of the standard.

MR. STABLEY stated he would like to address the question that came up in regards to the accessory buildings occurring in a front yard. He further stated there is a required front yard by ordinance that is basically the front building setback and no buildings can occur in that area. If the main building setback is behind that line and there is space for an accessory building it could be located then there is the possibility of putting the accessory building in the front of the main building. The Foothills Overlay does address that issue and requires a greater setback.

COMMISSIONER NELSEN stated he has a questions in response to an e-mail he received. He requested staff read the definition of a front yard in the zoning ordinance. Mr. Grant stated the definition of the front yard does say between the face of a building and the street but there is a section relating to accessory buildings that states they may not be constructed within the required front yard. Commissioner Nelsen inquired if that was the definition? The definition of a front yard says: A space unoccupied unless

otherwise provided for. He stated so accessory buildings are not allowed in the required front yard. Mr. Grant replied in the affirmative.

Commissioner Nelssen stated with regard to older subdivisions that have undeveloped lots there have been restrictions put on those properties in the last 30 years. Mr. Grant replied that is correct. If a subdivision comes in with amended development standards they would be hesitant to apply those standards differently from the properties already built.

COMMISSIONER HENRY stated there have been some concerns expressed about not having a grandfathering clause in the ordinance. Mr. Grant stated there are concerns that there is not something other than the zoning ordinance that defines the grandfathering. At the time the ordinance is applied, you would have to conform to the requirements of the ordinance.

Commissioner Henry inquired if all of the people that live in this area have been communicated with and understand the impact of this ordinance on their properties. Mr. Grant replied he felt very comfortable that they have all been contacted. Commissioner Henry requested that between now and the City Council meeting that they put an article in the newspaper so everyone in this area will be aware of what is happening and the impacts.

VICE CHAIRMAN LOTZAR stated he started to write down the various questions a property owner should ask himself or herself:

Am I subject to amended development standards? If the answer is no then, the new ordinance would apply. If the answer is yes, your analysis is not done. They would still have to determine whether or not those amended development standards cover the issues that we are talking about in this new ordinance. If they are silent on those issues there is some questions whether or not they would apply. If they specifically cover the issues as an example building heights, then the amended development standards might apply to me. It seems like with yet another layer of requirements here we are really setting up very difficult issues for folks to try police and apply the appropriate ordinance.

Vice Chairman Lotzar inquired if his analysis on what a property owner might need to do is accurate. Mr. Grant stated he felt it was accurate. He stated there is one alternative they might want to consider and that would be to craft language that would eliminate the question of amended development standards.

COMMISSIONER NELSEN stated it is his opinion that it should be applied to any new development that was the purpose of the overlay. He further stated he felt this document is well thought out and covers many of the issues but not all of the issues and those can be addressed through the variance process. There is also relief provided through the DR Board and City Council.

Commissioner Nelssen stated with regard to Commissioner Henry's concerns there have been numerous articles in the newspaper over the years and many public meetings.

Commissioner Nelssen remarked he felt this needs to be moved forward because it is meant to preserve and enhance the existing rural equestrian character of the area. He further remarked a lot has changed over the last 17 years and not all for the best.

COMMISSIONER NELSEN MOVED TO FORWARD CASE 25-ZN-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HEITEL.

COMMISSIONER HEITEL stated he believed this process has gone on for a tremendous amount of time and he felt the public has been made aware of this process. There has been years of public involvement and it would be very difficult for somebody to say they were not aware. He reported most importantly the ordinance is an outgrowth of what the City has asked us as citizens to do in defining character areas for the city, and is not to broad brush the city with one particular stroke, but to take a particular area so unique in character and create a character definition for that area. This ordinance and this overlay does that it provides non-conforming uses that are consistent with multiple applications in the city for other non-conforming uses and provides clear outlets for hardship cases both through the DRB and City Council. He concluded he enthusiastically supports this request.

COMMISSIONER OSTERMAN stated he would strongly recommend that before this goes before the City Council for a vote the Planning Office take some time to craft some specific grandfathering language that provides full spectrum protection for property owners that have structures and walls so there won't be any surprises after the overlay is adopted.

COMMISSIONER STEINBERG stated that was his concern. He inquired if there was anyway to approve this with a stipulation that calls for drafting of grandfathering language that would address most of the concerns they have heard tonight. Vice Chairman Lotzar stated they could but there is a motion and a second pending.

COMMISSIONER HENRY stated everything she has read in this ordinance is good and the intent is to preserve the rural equestrian areas. She further stated she is in 100 percent support of the overlay. She added she is concerned that people understand the grandfathering clause. She concluded she will be recommending this to the City Council for approval.

VICE CHAIRMAN LOTZAR stated he would prefer they craft some additional language on the grandfathering issue on the lines of what was suggested by Mr. Grant. He further stated Commissioner's Osterman suggestion regarding crafting language on grandfathering to be included in the Council's packet would be in everyone's best interest.

COMMISSIONER NELSEN stated he is hearing that at least three commissioners have concerns over the grandfathering clause is that because they don't understand what Mr. Grant said or don't agree with what Mr. Grant said. Vice Chairman Lotzar replied he understands but felt he articulated the decision tree of what someone would have to go through and he felt that level of analysis was beyond what should be reasonably expected. Commissioner Nelssen stated he would respectfully disagree

because this is no more complicated than ESLO. He further stated he wanted to make it real clear the grandfathering provisions are only for existing structures unless there are amended development standards in the subdivision. Ms. Boomsma stated generally speaking she would agree. Unless there is a case where something has not been specifically addressed.

Commissioner Nelssen stated he is very comfortable with this document as it is written and these issues have been gone over hundreds of times. He further stated he would stick with his original motion.

VICE CHAIRMAN LOTZAR stated he would be voting against this request on the simple issue of grandfathering otherwise he felt it was a fine idea.

COMMISSIONER OSTERMAN stated he would concur with Vice Chairman Lotzar's last statement.

THE MOTION PASSED BY A VOTE OF FOUR (4) TO TWO (2) WITH VICE CHAIRMAN LOTZAR AND COMMISSIONER OSTERMAN DISSENTING. CHAIRMAN GULINO ABSTAINED.

(VICE CHAIRMAN LOTZAR LEFT AT 6:30 PM)

INITIATION

4. **47-PA-2003 (Downtown Overlay and Related Issue Text Amendment)**
request by City of Scottsdale, applicant, to initiate a text amendment to create a Downtown Overlay and to address issues related to live entertainment and drive through establishments.

MR. STABLEY stated this is a request by the City of Scottsdale to initiate a text amendment to create a Downtown Overlay and to address issues related to live entertainment and drive through establishments.

CHAIRMAN GULINO inquired if a use permit would be required for a drive through in C-2 zoning. Mr. Stabley stated C-2 zoning does not allow drive throughs at all not even with a use permit. The intent is to keep drive throughs out of the downtown.

COMMISSIONER HEITEL stated their charge is just to approve the initiation of this process. He requested information on the citizen involvement that would occur in crafting this text amendment. Mr. Stabley stated they anticipate spending the entire month of March working with citizens and property owners in Downtown Scottsdale in seeking their input.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

NORWOOD SISSON, 7431 N. Cortland, stated most of downtown is zoned C-2. The reason it is still zoned C-2 is because the city doesn't want to process zoning applications without a site plan. He further stated he felt it would be wise to initiate a

rezoning process without a site plan. He remarked the zoning should conform to the General Plan and should not be tied to a site plan.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

MR. GRANT provided clarification on the rezoning process in the downtown.

CHAIRMAN GULINO inquired about the schedule for this process. Mr. Stabley replied they are anticipating coming back to the Planning Commission in April and go to the City Council in May. Chairman Gulino requested staff provide the Commission with an update at a future study session.

COMMISSIONER HENRY MOVED TO INITIATE 47-PA-2003 A TEXT AMENDMENT TO CREATE A DOWNTOWN OVERLAY AND TO ADDRESS ISSUES RELATED TO LIVE ENTERTAINMENT AND DRIVE THROUGH ESTABLISHMENTS. SECOND BY COMMISSIONER HEITEL.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0),

EXPEDITED AGENDA

8. 28-UP-2002 (Alltel Communications At Troon North) request by Campbell A & Z LLC, applicant, Desert Crown III Homeowners Association, owner, for a conditional use permit for a Personal wireless service facility in a small portion of Tract A within the Desert Crown III subdivision which is located at the northeast corner of Dynamite Blvd and N 114th Street with Single Family Residential, Environmentally Sensitive District (R1-18, ESL) zoning.

MR. VERSCHUREN presented this case as per the project coordination packet. He stated staff does have a sample of the cactus. Staff recommends approval, subject to the attached stipulations.

COMMISSIONER NELSEN requested to see the cactus sample. He inquired if there was a standard for faux cactus. Mr. Verschuren stated that is a good question. This is the second application the city has received. Commissioner Nelsen stated in Fountain Hills at Eagle Mountain and Shea there are two of these cacti. He inquired if this is the same material that was used there. Mr. Verschuren replied he did not know.

Commissioner Nelsen stated if the wireless ordinance is passed and because this is in the ESL area would it would have to go before the DRB. Mr. Verschuren replied in the affirmative.

Commissioner Nelsen inquired if somewhere down the road there is a change made to this site would those changes affect the application. Mr. Verschuren stated tonight's approval is for the use permit. Once it is approved and goes through the DR process if the facility is changed and does not match the DR application then it is out of conformance they would send in zoning enforcement to cite them for not being in conformance with the approved DR.

COMMISSIONER STEINBERG inquired about the future of the two vacant lots behind this facility. Mr. Verschuren stated nothing would be built on tract A. On the larger lot there will be a single residential dwelling built on that lot. Commissioner Steinberg inquired about the proximity of the stealth cactus to the nearest home. Mr. Verschuren pointed on the graphic where the nearest home was located. Commissioner Steinberg inquired between now and enacting the wireless ordinance, they heard two weeks ago, if the stipulated distance between the nearest residence and wireless facility as outlined in the new wireless ordinance could slip through. Mr. Verschuren replied he did not think so.

COMMISSIONER HENRY inquired why this has taken so long to come before the Planning Commission. Mr. Verschuren replied because they have been working with the property owners to address their concerns and it has taken longer than expected. Commissioner Henry noted the conditional use permit is only for five years so they would have to come back before the Planning Commission for review.

COMMISSIONER NELSEN stated following up on Commissioner Steinberg's concerns, this site would be grandfathered because the new ordinance has not gone into affect. He further stated with regard to Commissioner Henry's remark regarding the amount of time span that is one of the changes in the ordinance that stealth applications would be expedited.

Commissioner Nelsen inquired why there was a faux rock on the top to the vault. Mr. Verschuren replied the faux rock is to hide the top of the vault otherwise it would just be a metal plate.

Commissioner Nelsen inquired if there would be any additional landscaping. Mr. Verschuren outlined the where the existing landscaping was and where additional landscaping would be added. Commissioner Nelsen inquired if Mr. Verschuren felt this was the best location for the faux cactus. Mr. Verschuren stated they determined this was the best spot in terms of using the existing vegetation.

CHAIRMAN GULINO noted in the stipulations there are about five items directing the DR Board's attend to the landscape plan and the rock and cactus itself. He further noted he would like to leave that up to the DR Board.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 28-UP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES MEET ALL OF THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER OSTERMAN.

THE MOTION PASSED BY VOTE OF FIVE (5) TO ONE (1) WITH COMMISSIONER STEINBERG DISSENTING.

9. 29-UP-2002 (Edufit) request by Titus, Brueckner & Berry, PC, applicant, Lamb 4PS LLC, owner, for a conditional use permit for a health studio within one suite of the existing shopping center located at the northeast corner of Scottsdale Road and

Pinnacle Peak Road (23425 N Scottsdale Road) with Central Business District (C-2) zoning.

MR. VERSCHUREN presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

COMMISSIONER HENRY stated the applicant has received two parking credits for providing two shower stalls. She further stated when you look at the layout of the building it only shows one shower stall. Mr. Verschuren stated under the ordinance each shower stall allows credit for two parking spaces.

COMMISSIONER STEINBERG inquired if the proposed addition to Safeway would cause any further hardship with regard to parking. Mr. Verschuren stated he is not aware of any application that proposes an addition to Safeway. If there were an addition in the shopping center, the master-parking plan would need to be updated.

COMMISSIONER NELSEN inquired about the status of the Safeway expansion. He remarked the DR Board a long time ago approved it. Mr. Verschuren stated he was not aware of the expansion. He further stated if it was done in the past the approval is only good for one year. If they did not pull the building permit within a year, it would have to come back for approval. Commissioner Nelsen inquired if it could be done administratively. Mr. Verschuren replied it could be done administratively but knowing the amount of time that has gone by they would ask for an updated parking study. Commissioner Nelsen inquired if staff was saying that there is not a conflict between the proposed Safeway expansion and the use of this property. Mr. Verschuren stated when it comes in from re-approval staff would then evaluate whether it meets all of the parking requirements.

COMMISSIONER OSTERMAN MOVED TO FORWARD CASE 29-UP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES MEET ALL OF THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER HEITEL.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

REGULAR AGENDA

10. 29-ZN-2000#2 (Whisper Rock) request by Tornow Design Associates, applicant, C.T.A.J. Investments, LLC, owner, to rezone from Resort/Townhouse Residential, Environmentally Sensitive Lands (R-4R ESL), Single Family Residential, Environmentally Sensitive Lands (R1-43 ESL), Single Family Residential, Environmentally Sensitive Lands (R1-130 ESL) to Resort/Townhouse Residential, Environmentally Sensitive Lands, Planned Community District (R-4R, ESL, PCD), Single Family Residential, Environmentally Sensitive Lands, Planned Community District (R1-43, ESL, PCD), Single Family Residential, Environmentally Sensitive Lands, Planned Community District (R1-130, ESL, PCD) and to amend development standards of the Resort/Townhouse Residential (R-4R) district and to revise the approved Development Agreement on a 400 +/- acre parcel located near Hayden Road and Ashler Hills Road (extended).

11. 4-UP-1999#3 (Whisper Rock) request by Tornow Design Associates, applicant, C.T.A.J. Investments, LLC, owner, for a 20-acre expansion to an approved conditional use permit for a golf course on a 400+/- acre parcel located near Hayden Road and Ashler Hills Road (extended).

MS. WAUWIE presented cases 29-ZN-2000#2 and 4-UP-1998#3 as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

BILL LARSON, 7377 E. Doubletree Ranch Road, stated he appreciated Mr. Grant's comments during study session that this project is not as nearly involved as it looks. They primarily view it as a housekeeping issue. He reviewed the prior approval for the golf cottages. He remarked they are looking to provide flexibility in planning for improved golf club design and member cottage placement. He further remarked it is important to mention that this is a national golf course and it is a private course.

Mr. Larson stated the second request is to add 20 acres of the property to the existing golf course. If they did add this land, they would be entitled to 13 residential units with the existing zoning. He concluded they concur with the stipulations and staff recommendation.

COMMISSIONER HEITEL stated the concept of spreading the cottages seems like a great idea. He asked a series of questions regarding the expansion area to the north and locating the cottages into the hillside. Mr. Larson provided information on the three areas they have identified to potentially locate the cottages on the upper tier. Commissioner Heitel inquired without any limitations in the expansion they could conceivably put all 50 cottages in that area. Mr. Larson stated one of the components that precipitated the introduction of the PC overlay was because the City Attorney felt the explicit language inherent to the PC ordinance will offer greater clarification to city staff as they evaluate each of their proposals. If they were to cluster all of those units up here, it would be inconsistent with the concept graphic they have presented as part of the case. This suggests they would be distributing the cottages over the entire property. If they were all to be clustered in that area he thought staff would have a problem with approval as would DR. Commissioner Heitel inquired if that would be enforceable. Ms. Boomsma stated DR would have the ultimate authority on siting and approving the siting or various locations. Under the text of the PC ordinance, they probably could cluster them. The main change between the old zoning and the proposed zoning is to effectuate dispersal. If they were to cluster everything in the mountainside it would be contrary to their development plan and there would be major conversations about it, which ultimately the DRB could broker. It would not come back before the Planning Commission. Mr. Larson stated their objective is to enlarge the area of distribution and introduce space between the various cottages. He further stated he hopes that it is clear that their intent is for further distribution rather than tight clustering.

COMMISSIONER HEITEL requested clarification on the development agreement. Mr. Larson stated the reason for the development agreement so that this would not have the potential to become a hotel.

COMMISSIONER NELSEN inquired what has happened to the concept of conservation planning and clustering your development to maintain open space. He also inquired how it is a benefit to the overall community and the environment if they spread this development over a larger area.

BRIAN BEAR, Vice President Development, Grayhawk, stated Mr. Larson is at a little bit of a disadvantage because for the last couple of weeks his office has been working on the current plans. He reviewed the current plans noting 70 to 80 percent of the cottages would be clustered within the original area, but he does not know who they could stipulate to that. He further noted he felt they would still comply with the notion of clustering and preserving open space but they need the flexibility to sprinkle a few outside of that area. Commissioner Nelsen inquired if they would be willing to stipulate that 70 to 80 percent would be within the original area.

COMMISSIONER NELSEN expressed his concerns regarding the houses that would be located next to the wash and the potential for conflict with the equestrian users. He stated he could envision complaints from the residents regarding flies. Mr. Larson provided an overview of where the trails would be dedicated. He noted it is heavily treed and there it is an abundant open space so that would lessen the potential for conflicts. Mr. Bear stated they have disclosed to the buyers that there is a public equestrian trail so they feel confident they will be aware of the equestrian trail.

Commissioner Nelsen asked again if they would be willing to stipulate to having 70 to 80 percent in the original area. Mr. Bear stated that perhaps that was a poor choice of words on his part because the original boundary is somewhat arbitrary and does not pay attention to the topographic features. It is clearly their intent to place the majority of the cottages in that area. He further stated a stipulation would be administratively difficult.

Commissioner Nelsen stated he would like to reiterate Commissioner Heitel's concerns regarding if they don't have a certain number of units confined in the original area it opens the door on loading the wash next to the trail and the mountain. He further stated he has a problem with that.

COMMISSIONER STEINBERG requested information regarding the size of the cottage and what amenities would be provided. Mr. Bear provided information on the two types of cottages. Commissioner Steinberg inquired if the cottages would be self-sufficient. Mr. Bear stated the only things being purposed as far as a food and beverage facility would be consistent with the use permit. Commissioner Steinberg inquired how would this be different from a hotel. Mr. Bear stated the golf course is private and not open to public play. The development agreement outlines the uses to prevent it from becoming like a hotel. Commissioner Steinberg inquired if the trail is open to the public. Mr. Bear reported the trail is open to the public for equestrians.

COMMISSIONER OSTERMAN MOVED TO FORWARD CASES 29-ZN-2000#2 AND 4-UP-1999#3 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES MEET ALL OF THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER HEITEL WITH THE FOLLOWING CLARIFICATION:

- **THE GENERAL INTENT OF THE SCATTERED COTTAGE CONCEPT AS DEPICTED IN THE GOLF COURSE PLANNING EXHIBIT BE SUBMITTED TO THE DR BOARD TO THE EXTENT MORE CLUSTERING OCCURS IN THE ORIGINAL 70 ACRES THAT IS NOT DEPICTED IN THE EXHIBIT.**

COMMISSIONER OSTERMAN stated he would not like to include that in this motion.

COMMISSIONER HEITEL withdrew his second.

THE MOTION DIED DUE TO LACK OF A SECOND.

COMMISSIONER HEITEL MOVED TO FORWARD CASES 29-ZN-2000#2 AND 4-UP-1999#3 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES MEET ALL OF THE USE PERMIT CRITERIA WITH THE FOLLOWING STIPULATION:

- **THE GENERAL INTENT OF THE SCATTERED COTTAGE CONCEPT AS DEPICTED IN THE GOLF COURSE PLANNING AREA EXHIBIT BE SUBMITTED TO THE DR BOARD TO THE EXTENT MORE CLUSTERING MAY OCCUR IN THE ORIGINAL 70 ACRES COTTAGE PLANNING AREA.**

THE MOTION DIED DUE TO LACK OF A SECOND.

CHAIRMAN GULINO stated there has been some focus based on the concept of some percentage of the 50 cottages staying in the original 70 acres. He inquired if the applicant would be willing to stipulate to keeping a percentage of the cottages in the original area. Mr. Larson stated they would be willing to accept that 50 percent of the units would be in the original area. He presented the graphic they were prepared to bring to the Commission in November but they were continued by the City Attorney's Office because of the overlay issue. He reviewed the configuration they were requesting for 100 percent of the clusters at that time. If they could use that exhibit and say the 80 percent of units could occur. The reason for the expanded area is that the PC as an overlay requires 160 acres minimum and because of that, they had to show more acreage than they originally introduced. It also addresses one other issue of putting cottages high on that landform because that landform is not included in this.

COMMISSIONER NELSEN stated again they find themselves in the position of negotiating.

COMMISSIONER NELSEN MOVED TO CONTINUE CASES 29-ZN-2000#2 AND 4-UP-1999#3 UNTIL THE NEXT AVAILABLE TIME ON THE AGENDA.

COMMISSIONER NELSEN stated he would like to see more information of where the cottages would be located. He further stated he has a lot of questions and he would like to see information that is more specific.

MR. LARSON stated they are uncomfortable with the continuance because they came three months ago and on the evening of the Planning Commission meeting they were

continued by the City Attorney because of the overlay issue. They see nothing but environmental merit and they have a proven track record. He requested they reconsider the continuance because they have already been continued once.

MS. BOOMSMA stated if the Commission would like to hear the details of why she continued this case last November she would be happy to provide that information. Chairman Gulino stated that would not be necessary.

COMMISSIONER NELSEN WITHDREW HIS MOTION.

COMMISSIONER NELSEN MOVED TO FORWARD CASES 29-ZN-2000#2 AND 4-UP-1999#3 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR DENIAL.

THE MOTION DIED DUE TO LACK OF A SECOND.

COMMISSIONER HENRY inquired when the site plan is done would it come back to the Planning Commission or just go to the DR Board. Mr. Larson replied it goes to the DR Board.

COMMISSIONER HEITEL MOVED TO FORWARD CASES 29-ZN-2000#2 AND 4-UP-1999#3 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES MEET ALL OF THE USE PERMIT CRITERIA AND WITH THE FOLLOWING STIPULATION:

THE GENERAL INTENT OF THE SCATTERED COTTAGE CONCEPT AS DEPICTED IN THE GOLF COURSE PLANNING AREA EXHIBIT (THAT THEY HAVE IN THEIR PACKET) BE GENERALLY ADHERED TO THE EXTENT THAT MORE CLUSTERING TO A MINIMUM OF 50 PERCENT MUST OCCUR IN THE PREVIOUS DECEMBER 2002 GOLF COURSE PLANNING AREA WITH SPECIAL EMPHASIS AND SENSITIVITY IN LOCATING THOSE GOLF COURSE COTTAGES IN NOT DISTURBING AND ADVERSELY EFFECTING THE EQUESTRIAN TRAIL PASSING THROUGH THE AREA.

SECOND BY COMMISSIONER OSTERMAN.

CHAIRMAN GULINO requested clarification on the label on the drawing they are seeing because it will be incorporated into the packet moving on to the City Council. Mr. Larson stated it is the September 30, 2002 Golf Course Planning Area Exhibit.

COMMISSIONER HEITEL AMENDED HIS MOTION TO REFLECT IT IS THE SEPTEMBER 30, 2002 GOLF COURSE PLANNING AREA EXHIBIT. COMMISSIONER OSTERMAN SECONDED THE AMENDMENT.

COMMISSIONER NELSEN stated the motion indicated 50 percent and Mr. Larson indicated 80 percent would go in this area.

CHAIRMAN GULINO stated this looks like a good plan and these people have a proven track record. It is a nice community. It is a nice addition to our city. He further stated he

felt scattering the cottages through the community is a nice idea. He concluded he supports this request.

THE MOTION PASSED BY A VOTE OF FIVE (5) TO ONE (1) WITH COMMISSIONER NELSEN DISSENTING.

WRITTEN COMMUNICATION

There was no written communication.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 7:55 p.m.

Respectfully Submitted,

"For the Record " Court Reporters

APPROVED